



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 12-0256

STATE OF WEST VIRGINIA, RESPONDENT

V.

RONALD GOINS, PETITIONER

PETITIONER'S BRIEF

DAVID C. SMITH
COUNSEL ON APPEAL
Public Defender Corporation for the 9th Judicial Circuit
1460 E. Main Street, Box 4
The Law Building, 3rd Floor
Princeton, West Virginia 24740
(304) 487-2543, Extension 306
E-mail Address: dcs9@frontier.com
West Virginia State Bar I.D. Number: 3461

TABLE OF CONTENTS

	PAGE
1. Table of Contents	2
2. Table of Authorities.....	3
3. Assignments of Error	4
4. Statement of the Case.....	4
5. Summary of Argument.....	4
6. Statement Regarding Oral Argument and Decision	5
7. Argument	5
(a) Statement of fact.....	5
(b) The multiple sentences for brandishing are violative of the double jeopardy prohibitions in the West Virginia and Federal Constitutions.....	6
(c) The verdict of the jury is contrary to the law and the evidence.....	8
8. Conclusion	9
9. Certificate of Service	10

TABLE OF AUTHORITIES

STATUTORY LAW

	PAGE
West Virginia Code Section 61-7-11.. .. .	6

CASE LAW

	PAGE
<i>North Carolina v. Pearce</i> , U.S. 711 (1969) .. .	6
<i>State v. Kendall</i> , 639 S.E. 2d 778 (W.Va. 2006) .. .	7

ASSIGNMENTS OF ERROR

1. The trial Court violated the petitioner's double jeopardy rights by pronouncing multiple sentences for one act of Brandishing.
2. The verdict of the jury is contrary to the law and the evidence.

STATEMENT OF THE CASE

This began as a prosecution for five counts of Felony Wanton Endangerment, and one count of misdemeanor Domestic Battery and one count of Misdemeanor Domestic Assault.

On Tuesday, December 20, 2011, a trial by jury was held. At the conclusion of the trial, the jury convicted the petitioner of five counts of misdemeanor Brandishing.

On Wednesday, January 18, 2012, the Circuit Court of Mercer County, sentenced the petitioner to five consecutive one-year terms, suspended the sentence, and placed the petitioner on probation.

Subsequently, on April 17, 2012, the Circuit Court of Mercer County, revoked the petitioner's probation for use of a controlled substance. The Court modified the sentence, placing the petitioner in jail for one year, to be followed with four years of probation, and the suspended sentence remaining consecutive, one with another.

SUMMARY OF ARGUMENT

Petitioner, Ronald Goins, argues that the multiple sentences for Brandishing are constitutionally impermissible because the brandishing statute is a per-event crime as opposed to being a per-person crime.

Petitioner, Ronald Goins, argues that his convictions are contrary to the law and the evidence, because the undisputed evidence demonstrated that at the time the alleged wrongful conduct with the firearm occurred, he was alone, in the middle of his twenty-acre homestead; and the alleged victims were at a minimum of 150 yards distance, and two of them were asleep.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner does not believe an oral argument is necessary in this matter.

ARGUMENT

(A.) Statement of Fact. The essential facts of this matter were largely undisputed. The petitioner and his wife, Cynthia Tiller Goins, lived in Rock, West Virginia, on a twenty-acre tract of land owned by Petitioner. The area is rural (*Trial Transcripts, Page 119*). On or about July 28, 2010, the petitioner and his wife, Cynthia Tiller Goins, were quarrelling. Cynthia Tiller Goins had left the home earlier that day in the party's van. The van broke down in Matoaka, West Virginia. Cynthia Tiller Goins called the petitioner for help. He and his father came to her assistance of all concerned with the broken van, and went back to the petitioner's home in Rock, West Virginia (*Trial Transcripts, Page 63-65*).

Upon returning home, the petitioner went to bed. As soon as the petitioner was sleeping soundly, Cynthia Tiller Goins, took her two children and walked the better part of a mile to a neighbor's house, where Cynthia Tiller Goins made a phone call to her mother for assistance (*Trial Transcripts, Page 72*). Ms. Goin's mother then called Ms. Goin's brother, who resides in Northfork, West Virginia, to go and get Cynthia, and her children. Joseph Tiller, then climbed out of his bathtub, and in the company of his wife,

Amber Tiller, and their three children, drove forty-five minutes to the Goin's residence (*Trial Transcripts, Page 82-93*).

Upon arriving at the Goins residence, Cynthia Tiller Goins was not waiting on them on the side of the road where she was supposed to be (*Trial Record, Page 36*). The Tillers, in their van, with two of the children asleep, pulled off on the side of the road over 150 yards, one field, one railroad track, one creek/river, and two tree lines distant, to survey the situation (*Trial Record, Page 97*). The Tillers claim that they saw Ronald by his van, raise his arm, and take pot shots, with a .40 caliber pistol, the exact number being pointed at them (*Trial Record, Page 38,135,137,138*). The petitioner did not deny discharging his pistol, but claimed he was unaware that the Tillers, or anyone else was anywhere near, when he shot his gun; and that he fired at assorted bric-à-brac in his yard.

The Tillers, then left, collected Cynthia Tiller Goins, and the children, and called law enforcement. Legal charges were filed, which culminated in a jury trial, and a gun brandishing conviction.

(B) The multiple sentences for Brandishing are violative of the double jeopardy protection in both the West Virginia and the Federal Constitutions.

The double jeopardy clause of the United State and West Virginia Constitutions forbids multiple punishments for a single act. See North Carolina v. Pearce, U.S. 711 (1969). West Virginia Code 61-7-11 sets forth the crime of brandishing. This Code sections provides:

It shall be unlawful for any person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, to carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. Any person violating this section shall be guilty of a misdemeanor,

and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars, or shall be confined in the county jail not less than ninety days nor more than one year, or both.

It is evidenced from the language of the statute, that brandishing is a per-event crime as opposed to a per-person offense. Thus, the drawing of a weapon in a football stadium can give rise to only one charge, as opposed to fifty thousand charges, because there has been only one breach of the peace. Hence, in State v. Kendall, 639 S.E. 2d 778 (W.Va. 2006), the Court, quoting the California Court, wrote:

We conclude, and the Attorney General agrees, Peter, could properly be charged with only one count of brandishing a deadly weapon in connection with each separate incident, for a total of two counts, no matter how many individuals were present and witnessed his actions. Therefore, we remand the case to the juvenile court to strike two of the four counts of brandishing a deadly weapon.

After quoting a California Court, the West Virginia Court in Kendall, Supra, held:

Similarly, in present case, the State's evidence indicated only one act of brandishing should produce a conviction for only one count of brandishing. There did not appear to be any evidence of multiple acts of brandishing, or specific instances of threats against separate individuals. These issues may be readdressed during the new trial.

In the case at bar, Petitioner argues that the State proved a single act of Brandishing—albeit involving multiple persons. Although several rounds were fired, there was never any evidence presented as to how many. Petitioner contends that only one breach of the peace occurred, as per the State's evidence, and that he can only be punished for one count, despite the fact that five persons were involved. As Kendall, Supra, tenders, these multiple convictions, for purposes of punishment must merge into a single count.

Wherefore, the petitioner, Ronald Goins, prays that this Court would reverse the sentence herein, and remand this matter for further proceeding, consistent with the double jeopardy clauses of the State of West Virginia and Federal Constitutions.

(C.) The verdict of the jury is contrary to the law and the evidence. The petitioner, Ronald Goins, argues that the verdict of the jury is contrary to the law and the evidence. In advancing this argument, the petitioner acknowledges the heavy burden the law places upon him, but says that the undisputed facts of this case merit this discussion.

It was undisputed that at the time, Ronald Goins, discharged the weapon that, (1) Cynthia Tiller Goins had been gone for over one hour; (2) That the petitioner was alone in the middle of a twenty-acre tract of land that he owns; (3) that the “victims” were at least 150 yards distant on a roadway largely obscured by bushes and trees; (4) that two of the “victims” were asleep, and unaware that they had been “brandished” at; (5) that there was one field, one railroad track, one creek/river, and two trees lines between the petitioner, and the Tiller’s. Given the distance and the obstacles between the petitioner and the Tiller’s at the time the weapon was discharged, it leaves impossibility for a breach of the peace to occur.

The situation seems even more ludicrous when the fact that the outdoor police firing range for both Bluefield, West Virginia, and the West Virginia State Police at Institute, are within pistol shot of more people than were “allegedly endangered” by the petitioner. Indeed, the Bluefield range has a hospital, Intermediate school, city park, and football stadium, within pistol shot (*Trial Record Page 106-107*).

The petitioner respectfully argues that to permit this conviction to stand would potentially subject a multitude of law enforcement officers to criminal liability every time

they used a firing range, and could subject anyone during hunting season whom fires a weapon, to prosecution.

The petitioner argues that as it was impossible to breach the peace because of the lack of proximity, that the jury verdict is contrary to the law and the evidence, and must be set aside.

CONCLUSION

Petitioner, Ronald Goins, says that this Court should remand this matter for imposition of a single sentence, consistent with the double jeopardy protections in the West Virginia State and Federal Constitutions.

Petitioner, Ronald Goins, further says that this court should reverse his convictions herein, as they are contrary to the law and the evidence.

Wherefore the petitioner, Ronald Goins, prays that this Honorable Court would review his conviction herein.

FURTHER PETITIONER, RONALD GOINS, SAYETH NAUGHT.

RESPECTFULLY SUBMITTED,

Ronald Goins,
Petitioner,

By Counsel,



David C. Smith
Counsel for Petitioner
Public Defender Corporation for the 9th Judicial Circuit
1460 E. Main Street, Box 4
Princeton, West Virginia 24740
(304) 487-2543, Extension 306
E-mail Address: dc9@frontier.com
West Virginia State Bar No. 3461

CERTIFICATE OF SERVICE

I, David C. Smith, do hereby certify that I have on this the 15th day of May 2012, served a true and correct copy of the foregoing PETITIONER'S BRIEF upon the following:

Benjamin F. Yancey, III
Assistant Attorney General
State of West Virginia
Office of the Attorney General
812 Quarrier Street, 6th Floor
Charleston, West Virginia 25301

Ronald Goins
Southern Regional Jail
1200 Airport Road
Beaver, West Virginia 25813

Scott A. Ash
Mercer County Prosecuting Attorney
120 Scott Street
Princeton, West Virginia 24740

by either placing a true copy thereof in the United States Postal Service, addressed to the addresses above, which are the last known addresses of the above known to me, or by hand-delivering a copy to the above named.



David C. Smith